



POLICE DEPARTMENT

November 2, 2009

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Therese Garafalo
Tax Registry No. 900671
Housing Borough Bronx/Queens
Disciplinary Case Nos. 82323/06, 83217/07 & 84836/09

The above-named member of the Department appeared before me on August 4, 2009, August 5, 2009, August 6, 2009, and August 21, 2009 charged with the following:

Disciplinary Case No. 82323/06

1. Said Sergeant Therese Garafalo, assigned to the 111 Precinct, while off duty, on or about June 19, 2006, at a location known to this Department, in [REDACTED] County, engaged in conduct prejudicial to the good order, efficiency and discipline of the Department to wit: said Sergeant wrongfully followed Ms. [REDACTED] to Ms. [REDACTED]'s home, to her child's school and into her place of employment causing Ms. [REDACTED] annoyance and alarm.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Sergeant Therese Garafalo, assigned to the 111 Precinct, while off-duty, April 25, 2006, having been involved in an unusual police occurrence and having called 911, failed and neglected to notify the Department as required.

P.G. 212-32 – OFF DUTY INCIDENTS

COURTESY • PROFESSIONALISM • RESPECT

Disciplinary Case No. 83217/07

1. Said Sergeant Therese Garafalo, assigned to 111 Precinct, while off-duty, on or about September 30, 2006, was discourteous to New York City Police Sergeant Olson in that Sergeant Garafalo, during a telephone conversation with Sergeant Olson during which he was conducting an investigation into a prior incident, Sergeant Garafalo yelled and screamed at Sergeant Olson and hung-up on him. *(As amended)*

2. Said Sergeant Therese Garafalo, assigned to 111 Precinct, while off-duty, on or about September 30, 2006, failed to cooperate with a Department investigation in that she hung-up the telephone on Sergeant Olson, Patrol Borough Bronx investigation's Unit, and then subsequently failed to answer the telephone after numerous attempts to contact her. *(As amended)*

Disciplinary Case No. 84836/09

1. Said Sergeant Therese Garafalo, while assigned to Housing Borough Bronx/Queens, while on-duty, on or about and between March 18, 2008 and June 2, 2008, did wrongfully cause false entries to be made in Department records, to wit on eight (8) occasions, said Sergeant falsely noted in the VIPER 14 Patrol log that she performed required PTZ camera checks when, in fact, she had not, and on numerous occasions falsely indicated she performed PTZ camera checks prior to actually having conducted said checks. *(As amended)*

The Department was represented by Krishna O'Neal, Esq., Department Advocate's Office, and the Respondent was represented by Philip Mellea, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISIONDisciplinary Case No. 82323/06

The Respondent is found Not Guilty of Specification No. 1. The Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 83217/07

The Respondent is found Guilty of Specification Nos. 1 and 2.

Disciplinary Case No. 84836/09

The Respondent is found Guilty of Specification No. 1.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Aramus Jeanty, Sergeant Robert Olson and Lieutenant Daryl Miller.

Sergeant Aramus Jeanty

Jeanty has been a member of the Department for ten years and is currently assigned to the Queens North Task Force where he has been since January of this year. Prior to that, he was assigned to the Queens North Investigations Unit as a case investigator.

While assigned to the Queens North Investigations Unit, Jeanty investigated a case involving the Respondent. The case concerned the period from July 2006 to March 2007 and involved a [REDACTED] and [REDACTED] who lived across the street from the Respondent. Most of their allegations against the Respondent involved disputes such as property being dumped onto their residence and harassment of [REDACTED] and her children.

Jeanty said that the [REDACTED] were interviewed three or four times. He interviewed [REDACTED] in person and other interviews were conducted over the phone and recorded. During his investigation, he was assisted by Lieutenants Hellman and McDermott, as well as Sergeants Malcolm and DeSimone.

Jeanty recalled an incident involving the Respondent and the [REDACTED] on April 25, 2006. The Respondent called 911 and the [REDACTED] County Police responded. He testified that although the [REDACTED] County Police did not generate any reports, the Respondent failed to notify the Department of the police response to her residence.

In June 2006, Jeanty learned that the Respondent was suspended because she was arrested in [REDACTED] County for stalking. The Respondent was alleged to have followed [REDACTED] from her home to her child's school and then to her place of employment in the township of [REDACTED]. She also allegedly followed [REDACTED] in her private vehicle in a very close manner that caused [REDACTED] to feel alarmed.

Jeanty and the other investigators conducted their own independent investigation of the matter involving the stalking arrest. They interviewed [REDACTED] and [REDACTED] and conferred with the Integrity Control Officer of the Respondent's precinct. They also conducted an Official Department Interview of the Respondent.

Ultimately, the Respondent received an adjournment in contemplation of dismissal in her criminal case and an order of protection was issued. With regard to that incident, Jeanty testified that [REDACTED] was in fear for her life and safety and knew that the Respondent had access to a firearm. Jeanty noted that ten of his interviews with the [REDACTED] were recorded and that he interviewed [REDACTED] on July 17, 2006 and December 4, 2006. A redacted transcript of the July 17 interview was received in evidence as Department's Exhibit ("DX") 1, and a tape and transcript were also received as DX 2A and 2B, respectively.

On cross-examination, Jeanty acknowledged that there were 12 "logs" generated against the Respondent as a result of complaints made by the [REDACTED]. The log concerning the Respondent's failure to notify the Department was substantiated and the

log involving her arrest was partially substantiated. The remaining ten were deemed unsubstantiated.

In the course of his investigation, Jeanty spoke to a Mr. Sullivan and a Mr. Sansadero, a public safety officer for the Town of [REDACTED]. Sansadero and the Respondent had a brief conversation on the date of the incident with [REDACTED] at Town Hall. Sansadero described the Respondent as calm, reserved and not causing any havoc in the waiting room. He further acknowledged that the Respondent was waiting for Mr. Sullivan and not looking for [REDACTED].

Jeanty agreed that the reason [REDACTED] called 911 was because she was instructed to do so by an NYPD lieutenant. He clarified that [REDACTED] had called that lieutenant in an effort to resolve the matter and he told her to call 911. [REDACTED] was interviewed by a Sergeant Levine concerning this incident. During his investigation, Jeanty learned that the Respondent had made complaints about the [REDACTED] to the Town Hall in [REDACTED]. He learned that this was the reason she was present at Town Hall that day.

Jeanty acknowledged that Sansadero's name was provided as a witness by [REDACTED] despite the fact that his testimony was different from hers. Jeanty did not speak with her on the day of the incident at Town Hall. The first interview of [REDACTED] was on July 17, 2006.

On re-direct examination, Jeanty agreed that Sansadero provided some information that led him to substantiate the investigation. Specifically, Sansadero said that the Respondent said she was not supposed to be in the building and that people were out to get her and that she wanted to speak to Deputy Commissioner Ed Sullivan, [REDACTED]'s supervisor. Jeanty clarified that what the Respondent had said was that there

were people who worked at Town Hall who have it out for her and that she did not want to be seen and that she was not supposed to be there.

During recross examination, Jeanty recalled interviewing Sansadero on December 29, 2006. He explained that he "extracted from the conversation" with Sansadero that the Respondent was not supposed to be at Town Hall. He acknowledged that all the Respondent said was that there were people at Town Hall who had a vendetta against her.

On questioning by the Court, Jeanty acknowledged that he is familiar with the Town Hall building. He indicated that it is a public building and anyone can go in there lawfully.

Sergeant Robert Olson

Sergeant Robert Olson has been a member of the Department for 17 years. He is currently assigned to the Bronx Investigations Unit where he has worked for a little over eight years. He is an investigator and investigates matters such as firearms discharges by members of the service, misconduct cases, domestic violence and off-duty incidents.

On September 30, 2006, he was assigned by Captain McSorley to assist in an investigation of misconduct involving the Respondent regarding an incident in Yorktown, New York. The incident involved a Ms. [REDACTED], the Respondent and the Respondent's son.

Olson testified that [REDACTED] telephoned the Internal Affairs Bureau (IAB) command center and alleged that the Respondent lodged a false complaint against her with the Yorktown Police Department. Earlier that day, an incident had occurred in which the Respondent went to [REDACTED]'s house, pursuant to court order, to retrieve

property. In the process of doing that, the Respondent made an allegation that [REDACTED] had assaulted her son.

During his investigation, Olson received certain documents from the Yorktown Police and also interviewed [REDACTED]. After finding a contact number for the Respondent, Olson telephoned her. He explained, "Basically on behalf of Captain McSorley he asked me to contact her in regards to getting her to come in for a formal interview under Patrol Guide procedures in regards to this off-duty incident." Olson said that he reached the Respondent on the telephone, identified himself, and the Respondent identified herself as well. Olson informed her that McSorley was investigating an off-duty incident and needed her to "come in" to be formally interviewed. Olson confirmed that this call took place on September 30, 2006.

Thereafter, he testified, "Sergeant Garafalo became very belligerent [,] very discourteous and very distraught over my calling her. Telling me that you know you only believe her you don't believe me. I tried to explain to her that, you know, we wanted to get her side of the story you know nobody passed any judgment we just would have to interview all the parties concerned. She was very belligerent with me wouldn't listen to anything that I had to say and actually hung up the phone on me." He clarified that he believed the Respondent hung up because the call was terminated. Olson then spoke to Captain McSorley and made at least two additional attempts to contact her with "negative results." He then contacted her union representative, Sergeant John Dorst, in an effort to have him calm her down and explain to her that she needed to be formally interviewed, and that if she came in it would be appropriately handled.

Olson said that the Respondent called him back. She was extremely upset, "crying hysterically and saying something in sum and substance, 'I am sick and I am

going crazy.’’ The conversation was then terminated but Olson did not recall who terminated it. He did know that the Respondent then spoke to McSorley directly and he tried to persuade the Respondent to come in to no avail.

Out of concern for the Respondent’s well-being they contacted a Department psychologist, Dr. Knour, who said he would speak to the Respondent. Dr. Knour later called back and reported that he had spoken to the Respondent at great length. He felt she was extremely upset and said that unless it was completely necessary that she not be brought in for an interview. He also indicated that he was sending one of his on-call doctors to her residence to interview her and check on her well-being. Olson was not sure if the Respondent spoke with Dorst.

The Court then asked Olson to explain what he meant when he characterized the Respondent as having been “belligerent” in their initial phone conversation. Olson testified, “I was trying to inform her that she had to come in [and] she was telling me, you know, in a loud screaming manner that I am not coming in I don’t care, I can’t come in, I have child care issues, I am not, you know, I don’t care what is going on I am not coming in. She refused to listen.” When asked by the Court what he meant by “negative results” in his efforts to call the Respondent back, Olson explained that the phone just rang and he was not able to speak to anyone. He indicated that he attempted to call the Respondent back at least twice. He indicated that the Respondent called him back within an hour.

On cross-examination, Olson indicated that his partner had conferred with IAB and learned that the Respondent had reported the incident to them at 6:40 pm. Olson did not recall if the Respondent thanked him for getting back to her after she called IAB. He indicated that during the first phone conversation he had with her, the Respondent was cooperative at first, but “it went bad very fast after informing her what [the call] was in

reference to." Olson said after he told the Respondent why he was calling, the Respondent immediately started yelling and screaming. Olson agreed that he knew that there was an allegation that her son had been injured earlier in the day, he learned this from the police report. Olson was also aware that the Respondent was on modified duty status from examining her department personnel profile, but he did not know the reason for her modified assignment.

Olson indicated that his first telephone call lasted three or four minutes and he agreed she was upset. He did not recall if he was in mid-sentence when their conversation ended. He agreed that the Respondent did call back. Olson agreed that he did not know if the Respondent was home when he made the two attempts to call her back. He also agreed that he had no way of knowing if she was in the bathroom at the time.

Olson reiterated that the Respondent said she would not come in. No one called on her behalf to ask if an interview could be conducted at another time. Olsen said that Dr. Knour told him that after an extensive interview with the Respondent, she had made herself so emotionally upset he felt it would not be prudent to have her drive in. Thereafter, it was determined that it was not necessary for the respondent to come in for an interview.

On re-direct examination, Olson indicated that he did not know how the second call was terminated. As to the first call, he said, "she hung up on me." On re-cross examination, Olson reiterated the Respondent terminated the first call.

Lieutenant Daryl Miller

Miller has been a member of the Department for 28 years. He is currently the executive officer and supervising lieutenant assigned to the Housing Bureau Investigations Unit. His main duty is to investigate allegations of misconduct. At some point, he received allegations of misconduct regarding the Respondent and conducted an investigation. He focused on the time frame of March 18 to June 2, 2008. In connection with this investigation, he reviewed Command Logs, roll calls and audit reports from the VIPER unit.

Miller described the VIPER unit as a video interactive patrol enforcement unit. He testified there are cameras set up around various areas inside a particular housing development. VIPER 14 is located at the Ravenswood Houses and he believes over 500 cameras feed into one room there called the VIPER room. He indicated that VIPER 14 is “digital.”

At VIPER 14, police officers monitor the cameras to look for suspicious activity and look for persons who may be wanted. Supervisors are supposed to ensure that officers spend most of their time watching the cameras, do two license plate checks per hour and ensure that the cameras are not used in an inappropriate fashion. Miller clarified that some of the cameras are “PTZ,” meaning that they have the capability to pan, tilt and zoom. One of the things that supervisors are supposed to look for is to make sure that the officers that are assigned to VIPER are not using PTZ cameras to look inside people’s windows. Supervisors are required to check one half hour of each officer using the PTZ cameras. They are also responsible for making sure that complaint reports are up to date.

Miller stated that supervisors have to examine 30 minutes of either video or digital recording of an officer's PTZ footage. They check to see what a particular officer looked at and they have to check a time frame of 30 minutes for each officer. Most VIPER units maintain a list of officers and whether or not they been checked by a supervisor for that week. A supervisor generally checks a particular police officer and then, after the check is completed, makes an entry in the Command Log as to whether or not there was a violation.

At VIPER 14, the video images are stored on a hard drive as it is a digital system. Miller said that he can log into the system and check to see what a particular person did. This system is called the Audit Viewer Work System. As an investigator, the system allows him to query a particular time period and how a particular person used the system. He said it allows him to determine what cameras a person used and whether there were playbacks or PTZ. He said, "You can query and get everything."

Miller indicated that when a supervisor reviews 30 minutes of an officer's viewing activity, the supervisor can speed it up so that the review could take less than 30 minutes. During the time he reviewed the Respondent's work, she was assigned to the second platoon, 7:00 am to 3:23 pm. He also generated an Audit Viewer Report ("audit report"). To ease in his investigation, he created a chart containing columns for the date, Command Log entries, and whether any discrepancies were noted. Miller affirmed that he noticed discrepancies. He explained that there were days where no PTZ checks were conducted, as was reflected in the audit report, however, the Respondent made Command Log entries indicating that she had, in fact, conducted the checks. Another discrepancy that Miller noticed was that the Respondent made Command Log entries purporting that

she performed PTZ checks at a time before she actually performed the checks; she stated that there was "no violation observed" prior to ever making a check.

Miller testified that he placed the audit report data on a disk. He condensed it from its initial 45 pages to a smaller seven page document (see DX 3).

On *voir-dire* examination of this exhibit, Miller indicated that the document came from the Audit Viewer Work System, and he generated the report sometime around July 18, 2008. Prior to testifying in this case, the last time he saw this report was the Friday before this proceeding. In order to generate the report, he said that he performed a "query to get everything so this is if you check all the parameters." He clarified that this seven page document was a shortened version of the actual, original report. He claimed that this shortened version contained the same information as the original. In reducing the report from 45 to seven pages, Miller testified that he pasted the contents into a Microsoft program and reduced the font size.

Miller reiterated that he prepared a chart to compare dates, Command Log entries made by the Respondent and information contained on the audit report. He reiterated that his chart indicated that the Respondent made Command Log entries showing that she conducted PTZ checks despite the fact that no checks were reflected in the audit report, on several instances. Additionally, Miller said that his chart showed that the Respondent indicated that she conducted checks at a certain time, but the audit report revealed that the checks were actually performed at a different time.

On *voir-dire* examination of this exhibit, Miller said that he gathered the information for his chart from a variety of sources. He determined the dates and tour that the Respondent was working from examining roll calls and the Command Logs from VIPER 14. He did not record the information that he gathered on a piece of paper prior

to typing it on the chart he constructed. He specified that the Audit Viewer information was already on the screen and all he had to do was look at it. In response to the Court, Miller agreed that to construct the chart, he sat at a computer with the Command Logs, the roll calls and the Audit Viewer information and inputted the data. He constructed the document by himself.

On continued direct examination, Miller affirmed that he made notations in his chart reflecting instances where the Respondent made Command Log entries indicating that she made PTZ checks but where he found no records of these checks. In reviewing the chart, Miller cited eight specific instances where the Respondent purported that she performed PTZ checks when, in fact, he found no such record of a check ever being performed. These dates were March 30, 2008, April 1, 4, 6, 12, 14, 18, and May 10, 2008.

Additionally, Miller testified that he determined that the Respondent noted in the Command Log that she conducted PTZ checks earlier than the time that the Audit Viewer system reported the check was conducted. Miller noted these discrepancies on his chart (DX 4) and provided cited examples. He said that on March 25, 2008, the Respondent noted in the Command Log that she conducted a PTZ check at 1:15 pm. However, the Audit Viewer Work System reflects the check being done at 1:38 pm for a period of 36 seconds. Miller said that "as soon as [the check] started it ended." That day, the Respondent also performed a second check at 1:41 pm. On April 11, 2008, the Respondent claimed to have performed a PTZ check at 7:50 am, however, the Audit Viewer Work System indicates the check to have commenced at 8:30 am and ended at 9:38 am. Miller said that the Respondent's entry of 7:50 am was made prior to her having ever conducted the check. He explained that the problem with this is that the

Respondent is making a Command Log entry prior to actually performing the PTZ check. He claimed that the Respondent is "giving" a conclusion in her entry for something that has not been done and for something that has not yet happened. Specifically, the Respondent was making entries indicating "no violations" for the 30 minute review.

On page three of his chart (DX 4), Miller testified that on May 16, 2008 the Respondent made a Command Log entry that she performed a PTZ check at 7:35 am. The audit viewer report, however, shows the check at 9:23 am for a period of 12 seconds. Miller claimed that the Respondent made these types of entries about 19 times. In response to the Court's inquiry, Miller identified those dates as March 25, April 5, 7, 8, 11, 13, May 2, 3, 6, 12, 13, 16, 19, 23, 25, 26, 27, 31 and June 2, 2008. Miller affirmed that on each of those dates, the Respondent wrote in the Command Log that there were no violations.

Miller acknowledged that he reviewed the Command Logs from VIPER 14 from the period of March 18 through June 2, 2008. He opined that about a third of each log book concerns the day tour.

After an adjournment in the proceedings, Miller returned to the stand and his direct examination continued. He recalled that he previously testified about 19 dates where there were discrepancies between what the Respondent entered in the Command Log versus what the audit report revealed.

Miller described the setup of the Ravenswood VIPER screens as being digital video recorders that allow a user to sign in with a user name and a password. The screens then display a dialogue box allowing a user to select, from a calendar, a particular date and time to conduct a PTZ check. The system is configured so that up to four PTZ checks can be conducted at the same time.

Miller testified that he constructed an investigating officer's report, which was received in evidence (see DX 7). He assembled this report in gleaned information from entries that the Respondent recorded in the Command Logs and information that was reported on the audit reports. Where discrepancies were noted, Miller noted them in the remarks column of the report. His report encompassed the period of March 18, 2008 at 3:00 pm to June 2, 2008. He clarified that the report included all of the dates that the Respondent worked in that time period. During this period, he identified 19 dates where there were discrepancies between what the Respondent recorded in the Command Log versus what the audit reports reflected. Miller reiterated that he also discovered eight dates where the Respondent reported in the Command Log that she conducted PTZ checks, however, the audit viewer report reflected no such check performed.

Miller recalled that he conducted an Official Department Interview of the Respondent at some point. He brought to her attention the fact that he found discrepancies in her Command Log entries versus what was reported on the audit viewer report. Specifically, that there were instances where she recorded in the log that she performed PTZ checks earlier than when they were actually conducted, and, that she recorded having performed checks that there was no evidence of having ever occurred. Miller stated that the Respondent explained that "when she comes into work normally at the top of the hour she will write in the Command Log that she is doing a PTZ check...in case somebody comes in they want to see that PTZ check..." The Respondent told Miller that she tries to do the check at that time that she notes it in the log, however, sometimes she is unable to because she is distracted by the phone or "things will happen and that PTZ check will be conducted some time later in that tour." When confronted with the Command Log entries purporting that PTZ checks were conducted versus the

audit reports that showed no check was ever conducted, Miller said that the Respondent “was more surprised.” He claimed that she did not have an answer as to why the checks were not shown in the Audit Viewer Work System.

On cross-examination, Miller acknowledged that he was aware of the supervisor’s VIPER base training manual, however, he admitted that he has never seen the manual. He also said he is aware of Patrol Guide § 212-98, the procedure for Housing Bureau Closed Circuit Television Patrol, which enumerates a sergeant’s duties for PTZ checks. When asked if anything in that section mandated that a PTZ check be performed simultaneous with a Command Log entry reflecting same, Miller said, “You won’t find that in that section...you would find it in the Command Log entry section because you can’t make a Command Log entry prior to something being done because you are stating that there is no violation observed for something that has not been conducted yet.” Miller was not aware if the Command Log entries made by the Respondent were done partially or in total at one time. He contended that even if the Respondent made an entry, then returned and wrote “no violation” subsequent to performing the PTZ check, the entries would be incorrect on at least 19 occasions.

Miller was asked why it would be incorrect to make a Command Log entry, then perform the PTZ check, and then return to the entry to indicate no violation. He said that the Respondent never specified that she did this in her Official Department Interview. Miller affirmed that he looked at the Command Log, but did not recall if “no violation” was the last notation made in each entry that the Respondent made.

In reviewing the copies of the Command Logs in evidence (see CX 1), Miller identified the equipment check entries made by the Respondent. He affirmed that he was aware of what they represented and what the purpose of the entries were, although he

admitted that he did not know what the designation “SCNR” meant. When asked about the 19 entries that he claimed were not timely made, Miller admitted that the entries were proper under the guidelines of the Patrol Guide.

Miller explained that on the audit report, the description area reflects the time that the playback was started, the time it was ended and what was viewed by the user. For example, Miller explained that on the first page of the audit report (see DX 6), on May 12, 2008, the Respondent performed a check of May 11, 2008 at 4:00 pm. The latter date is what the Respondent chose to view. Miller said that he was certain that, according to this report, the Respondent was viewing footage from May 11 at 4:00 pm on May 12. Miller admitted that he is not trained on “the computer” and is not familiar with the inner workings of it. He admitted that one clock on the digital video recorder (DVR), the mechanism that records the camera footage, was four minutes off from the computer view station. However, Miller noted that he used a “five minute range” as a leeway in reviewing the records. Even if the Respondent was afforded a five minute leeway in Miller’s analysis, her Command Log entries, under the Patrol Guide, had to be contemporaneous with the event being memorialized in the log. He said, “You can’t put an entry of something that hasn’t occurred.”

Miller testified that his unit conducts a monthly audit of three VIPER units each month. To his knowledge, he did not know of the Respondent ever being in violation of the audits. Miller agreed that it was policy that if an individual was found in an audit to have at least a 90 percent compliance rate, no action would be taken. He said a variance of 90 percent or above was not a command discipline issue. Miller was unsure of how many PTZ checks the Respondent conducted in April. He was sure that the computer system had been serviced before and he indicated that the Department’s Technical

Assistance and Response Unit (TARU) is responsible for servicing the VIPER computers. After reviewing a Command Log for April 6, 2008, Miller agreed that it reflected that there were some cameras that were not working on that day. He noted, however, that the cameras were operational at the time of his audit and are working now. He was unsure of when those cameras were fixed.

In looking at his investigating officer's report (DX 7), Miller acknowledged that on April 11, 2008, the Respondent began a PTZ check at 8:30 am and ended the check at 9:38 am. The audit report for this day shows that the Respondent viewed a period of time from 9:00 am to 10:00 am. When questioned about the possibility of the Respondent viewing footage at 10:00 am, despite the fact that it was recorded that she ended her check a half hour earlier, Miller testified that there were no safeguards built into the system to prevent a user from going ahead in time. It is possible to pick a day in the future because nothing in the system prevents it. Miller explained that it is not the issue of the time being wrong in the system; the system allows a user to put a future date in and the system will "run the time...continue...you just won't be seeing anything." He specified that the time period is submitted by the user reviewing the footage. He noted that a user can click on a time and a date and the computer records that time. If the time is in the future, the computer will still run. Miller indicated that he has tried this himself and it will say, "video not available." He said that if the Respondent puts a time in the Command Log, and the audit viewer shows something else, "that is because that is the time she watched [it] on Audit Viewer Report."

Miller did not issue any command discipline to the Respondent for these discrepancies. He said that her Command Log entries were wrong in and of themselves, although he said that he did not consider them false entries. Miller said that he would not

be surprised if the Command Log entries and the chart that he prepared differ on all of the dates that he claimed the Respondent did not make timely entries. He explained that the Respondent, in her Official Department Interview, said that she “wr[o]te anything in the Command Log in case somebody walks in.” Miller stated that the Respondent’s Command Log entries were inaccurate as to the officer that she viewed, the camera that she viewed and the time that she viewed it. Because police officers assigned to the VIPER unit were utilizing the cameras 24 hours a day, any time that the Respondent picked to view would coincide with a separate report that is prepared by police officers to document their activities. Miller again reiterated that the audit viewer computer records whatever time that the user clicked on; on 19 occasions the Respondent picked the wrong time.

Miller disputed that there are problems with the computer system. He asserted that “there is nothing the matter with the computer, we had TARU there.” No other members of the service were the subject of any disciplinary action for their PTZ checks having different times. Miller reiterated that the Respondent’s errors arose from either clicking on the wrong time on the computer or not “...follow[ing] her Command Log entry.” He restated the importance of checking the work of police officers assigned to the command on a weekly basis.

Miller agreed, in viewing page four of DX 7, that it reflected the Respondent performing a PTZ check at 9:28 am of a video that took place between 7:00 am and 9:35 am that same day. When asked how it was possible for the Respondent to have viewed something that had not yet happened, Miller testified that the computer allows a user to “put in a time...in the future.” He noted that the computer on which the PTZ check is performed has nothing to do with the DVR recorders and the cameras that the officers

utilize. Regarding May 6, page 5 of DX 7, Miller said that the Respondent viewed something that had not yet happened. In response to the Court, Miller said that the Respondent's PTZ check for that day was bad and her "whole entry" was bad. Miller reiterated that he was surprised to discover that the system allows a user to pick a date to check in the future.

Regarding DX 6, the audit report, Miller testified that the report was provided to him by a Sergeant Hurdle. The report is generated by logging into the system with a user name and password and conducting a search within a particular time frame. The time frame for his report was March 18 until June 2, 2008, and was a query for only the Respondent. Miller never checked to see if other sergeants performed PTZ checks during the time frames that the Respondent claimed to have performed checks in the Command Log. He disputed that the Respondent performed her checks under another user's name. Miller acknowledged that in one instance, the audit report showed that the Respondent was logged into the computer for over two and a half hours. He further admitted that on May 17, she was logged on for five hours. He identified a few other occasions where the Respondent appeared to be logged into the system for an extended period of time.

When questioned about the possibility of another sergeant being logged into the system, and the Respondent performing checks under that sergeant's user name, Miller doubted it. He contended that log in and log out times differ from the actual times that are checked. Miller did not check to see if PTZ checks were performed using other codes at a time close to where the Respondent claimed in her Command Log entries to have performed the checks.

Miller testified that he does not have a copy of a full audit report for the time frame that he identified. He claimed, however, that one exists and noted that each month

audits are conducted using the computer and the data placed on a disk as opposed to a hard copy. There are no printed reports. At the time that he testified, Miller said that it would not be possible to generate a “full report” encompassing the period of March 18 to June 2, 2008; the system purges itself and it does not retain information forever. He was not sure how long the system retains information.

The Respondent’s Case

The Respondent called Sergeant John Dorst and James Garafalo. She also testified in her own behalf.

Sergeant John Dorst

Dorst testified that he has been a member of the Department for 27 years and has been a sergeant since 1989. He is assigned to the 102 Precinct and is also a representative of the Sergeant’s Benevolent Association (SBA).

Dorst testified that he has known the Respondent since about 1992 or 1993 when he was her Field Training Unit (FTU) sergeant. He recalled receiving a phone call from the Respondent in the early evening on September 30, 2006. He recounted that the Respondent was “very upset [and] highly emotional” because she had received a phone call from the Bronx Investigations Unit ordering her to the Bronx for an Official Department Interview. Dorst said that the Respondent told him that her son had been the victim of a crime in Yorktown and, upon returning home to [REDACTED], she received a phone call from a sergeant in the Bronx Investigations Unit demanding that she go to the Bronx for an interview. Dorst said that the Respondent claimed to be too upset to drive the almost 70 mile journey from her residence to the Bronx.

At some point, Dorst said he received a phone call on his cell phone from a sergeant in the Bronx Investigations Unit. That sergeant told Dorst that they were trying to reach the Respondent for an interview in connection with an incident that had occurred in Yorktown Heights. Dorst described the caller's attitude as "frustrated that they weren't able to contact [the Respondent] as quickly as they wanted to." Additionally, the duty captain was upset that the process of locating the Respondent was taking so long.

Dorst testified that he received a second phone call from the Respondent. He said that she was even more upset and said it was "virtually impossible" for her to drive to the Bronx. Dorst suggested that the Respondent contact an individual in Psychological Services that she had previously spoken to in the past. About an hour and a half later, Dorst received a phone call from the sergeant from Bronx Investigations that had previously called him, who relayed that they were informed by Psychological Services that the Respondent was too emotional to drive, that they were going to be serving her with Department charges and that she was not going to be interviewed in the matter. Dorst was unaware if the Respondent ever spoke to a captain.

On cross-examination, Dorst acknowledged that he advised the Respondent to call Psychological Services. He noted that this was prior to him finding out that she had been in touch with Psychological Services.

Dorst acknowledged that he has been a member of the Department since 1989, and in that time, supervised many officers. He agreed that if he gave someone a directive to appear for an Official Department Interview, he would expect them to comply, except if there were extenuating circumstances. He would expect such extenuating circumstances be relayed to him.

Dorst admitted that he neither observed nor overheard the Respondent's telephone conversation with anyone from the Bronx Investigations Unit. Similarly, he was not sure of the tone of voice that the Respondent employed in speaking to Sergeant Olson or Deputy Inspector McSorley.

James Garafalo

James is the Respondent's 16-year-old son. He testified that he remembered June 19, 2006 because it was one of the worst days in his life. It was testing day at the end of the year and his mother drove him to school. Two hours later he was done and she picked him up. She told him they were going to city hall and afterward they were going out to eat or something. He didn't want to go but she told him it would take 10 or 20 minutes. They went to the location parked the car and she was gone for a long time and he was upset. About an hour and a half later a cop knocked on the window of the car and told him his mom was in trouble and they drove over to the police station. They were at the police station "pretty much the whole night" and he remembered his mom as very, very upset.

James said that he was the only one in the car with him mother on the way to Town Hall and that it was the first time he was there. He said she did not drive very fast in the parking lot and she found the closest spot to the door. There was nothing remarkable at that time.

James also testified about September 30, the day they went to Yorktown, New York. He explained that his mother had lent a "whole bunch of stuff" to their former friend [REDACTED] and they went to pick up their stuff from her. He went with his

mother and a friend, [REDACTED] went out of the van, his mother stayed in the passenger seat and [REDACTED] would bring stuff from the street and hand it to him in the back of the van.

James recalled that [REDACTED] was sitting on the porch with her husband and when they were almost done she stormed up to the back of the van flung open the door and grabbed him by the arm and almost pulled him out of the van.

His mother called the police and an ambulance checked him out and they went to the police station and filled out a report. They went home and his mother was very upset. He recalled that she had to do something with her job but he could not remember what. She called her job and then he recalled that she went to her bedroom. She was crying and he tried to comfort her. She kept asking to be allowed to speak but the person on the other end just kept talking. James recalled a lot of telephone calls that night and she had two phones in her hand. She had friends calling her and she was talking to people at her job.

On cross-examination, James said that he remembered June 19, 2006 because that was the day his mother was arrested in connection with problems she was having with her neighbors, the [REDACTED]. He agreed that he had spent time at the [REDACTED]'s home. He did not know that [REDACTED] worked at the Town Hall. He did not know if she went to Town Hall after she dropped him off at school.

The Respondent

The Respondent is a 17-and-a-half year member of the Department. She has been a sergeant since 2002 when she was assigned to the 111 Precinct.

On April 25, 2006, the Respondent said that she was living in [REDACTED], located in [REDACTED] County. She was familiar with [REDACTED] though she claimed to have never

met her aside from "bump[ing] into her" on two occasions at the supermarket and the drug store. On April 25, 2006, the Respondent testified that she called the [REDACTED] County Police Department because she heard yelling, ranting and screaming while standing in her driveway. When she looked over, she saw [REDACTED] standing in the front yard and screaming in her direction. The Respondent said that when the police arrived, she informed them that [REDACTED] was screaming and yelling and that she wanted them to find out what the problem was. She did not know what [REDACTED] was screaming about, nor did she know if the police ever prepared a report. She was never asked by the police if she wanted to make a complaint, nor was she interested in doing so.

The Respondent acknowledged that she never notified this Department about this incident. She explained that her reason for not doing so was because she did not believe it was a "police related matter in that respect." She claimed that she immediately told the responding police officers that there was "absolutely no dispute." The Respondent testified that she has never had "any exchange of words" with [REDACTED] and that her screaming startled her.

In June 2006, the Respondent said that she still lived in [REDACTED] County. She was living with her son Jaime, and during the school year, he would attend school while the Respondent was working. On June 19 of that year, the Respondent said that she drove her son to school. After doing so, she "immediately" proceeded to [REDACTED] Hall and arrived at about 8:00 am. She explained her reason for going was because she had written a letter to [REDACTED] Town's Public Safety Office (see RX A) expressing her concern about a basketball hoop that was permanently fixed in front of her residence. The Respondent said that she wrote this letter on May 22, 2006, and she received a

response about a week prior to June 19, in the form of a phone call from a Mr. Ed Sullivan.

The Respondent explained her reason for going to [REDACTED] Town Hall on June 19, 2006. After having completed her shift that morning, she was approached by the Integrity Control Officer of her command, Lieutenant DeRespino, who informed her that he was receiving "a lot of different phone calls from...from this woman [REDACTED]." The Respondent said that DeRespino seemed disturbed and he relayed that [REDACTED] alleged that she went to her office and refused to leave. It was at that point, the Respondent claimed, that she deduced that [REDACTED] worked for the Town of [REDACTED].

Because the Respondent felt that there was "corruption going on" within the Town of [REDACTED], combined with the fact that [REDACTED] called her command to complain about her and that her letter remained unaddressed, the Respondent decided to go to Town Hall in person. She reiterated that she arrived at about 8:00 am in order to try to "catch [Sullivan] as he is coming into the building before you know, if my assumption is correct [REDACTED] is working there I wanted to talk to him before perhaps she got to him." While waiting for Sullivan to arrive, the Respondent said that she informed a public safety officer of her presence and stated that she wanted to see Sullivan. The officer informed the Respondent that he had not yet arrived and the Respondent said that she would stand in the corner and wait for him because she did not want to be seen and did not "want anyone to be tipped off" that she was at the Town Hall. While waiting for Sullivan, at about 9:00 am, the Respondent testified that a woman walked past her in a deliberate and arrogant fashion. She said that the woman strolled past her nonchalantly so as to let her know that she had seen her. When the Respondent found out that this woman worked at the Town Hall, she called DeRespino to inform him that he may

receive "a rash" of further calls complaining about her. The Respondent had no contact with that woman and went to wait in the parking lot after providing the security guard her cell phone number and asking that he call once Sullivan arrived to work.

The Respondent left the Town Hall in order to pick up her son at school. She returned and called Sullivan's office a few more times. At about a quarter to ten, the Respondent reached Sullivan by phone and she claimed that the sound in his voice seemed that "he was aware of something." When she asked Sullivan to meet her outside the Town Hall, he appeared with the Commissioner of Public Safety and three [REDACTED] County Police officers. The Respondent was arrested and the criminal case was adjourned in contemplation of dismissal. The Respondent denied that she ever approached [REDACTED] that day and denied that she ever asked the security guard if she could see [REDACTED]. The Respondent averred that [REDACTED] "somehow knew every move I was making."

On September 30, 2006, the Respondent affirmed that she was still assigned to the 111 Precinct. She recalled traveling to Westchester that day in order to retrieve furniture that she had stored at the house of a former friend, [REDACTED]. Because [REDACTED] refused to return the furniture, the Respondent sought and received an order from Civil Court in Westchester County allowing her to do so. On a prearranged date, the Respondent rented a white van and proceeded to [REDACTED]'s house with her son and another person, [REDACTED], to get the furniture. Because she said [REDACTED] is "feisty," she told [REDACTED] to drive while she sat in the passenger seat and her son in the back of the van. The Respondent testified that she instructed her son to load everything into the van. In the process, [REDACTED] approached the van and "started making a bunch of comments." [REDACTED] then opened the back door of the van, where the Respondent's son was, used

profanities and began to yank on his arm very hard. The Respondent intervened, attempting to prevent [REDACTED] from pulling her son from the van.

Ultimately, the Yorktown Police arrived on the scene as well as an ambulance for the Respondent's son. Pictures were taken of his injuries of scratch marks on his arm and a written statement was taken from the Respondent's son at Yorktown Police Headquarters. The Respondent testified that she did not make any notifications to the Department during her drive home. She explained that her son was very distraught and the other individual in her party, [REDACTED] needed to be home by a certain time. When she arrived home, she contacted the Internal Affairs Bureau (IAB) to report the incident and inform them that her son was the victim of a crime in Westchester County resulting in the response of the Yorktown Police. The Respondent claimed that the individual who took her telephone call at IAB asked if the incident concerned [REDACTED], as she had already phoned in a complaint about the Respondent. About five minutes later, the Respondent received a phone call from Olson and she assumed that he was calling in response to her notification to IAB. Olson told her that she was being ordered in on duty pursuant to [REDACTED]'s complaint. The Respondent claimed that Olson yelled at her in a commanding fashion, was dismissive and refused to listen to her explain that her son had been assaulted. After she did not hear anything else on the telephone, she believed the conversation had ended and she hung up in order to call her delegate, Dorst. The Respondent said she explained her concerns to Dorst, that her son was the victim of a crime, and that she was terrified of being arrested on false allegations. She noted that she was arrested "the first time" (June 2006) on false allegations and said that she was too terrified to go to the location where she was being told to report because she feared that

she would be involved in an accident. Subsequently, the Respondent called the Department's Psychological Services unit.

The Respondent was unsure if her home phone was ringing after speaking to Dorst. She explained that there was "so much going on" because she was making various calls to different people. She said there was no indication that the Department was attempting to get in contact with her and she understood that she had been ordered in and believed, at that point, the conversation with Olson was over. The Respondent said that she was not going to follow the order, however, she was trying her best to plead to conduct the interview at another time. She believed that Olson was unaware that her son was the victim of a crime until after she mentioned it. The Respondent denied saying that she would not come in. When she called Psychological Services, whom she had been in contact with since her June arrest, she told them that she was unable to make the 70 mile drive to the Bronx. As a result of her call to Psychological Services, the Respondent was excused from having to travel to the Bronx to be interviewed concerning the incident with [REDACTED] The Respondent testified that [REDACTED]'s complaint alleged that she filed a false police report and the complaint was determined to be unfounded and untrue. Additionally, [REDACTED] was served with an order of protection and was charged in connection with the incident with the Respondent.

The Respondent recalled that in August 2007, she was transferred from the 111 Precinct to the VIPER unit. Initially, she was transferred to VIPER 11, however, in March 2008 she was assigned to VIPER 14. There, her duties, while limited, were to supervise in the VIPER room, ensure that no negative postings were in the VIPER room, conduct PTZ checks and to make relevant Command Log entries. The Respondent recognized her handwriting in the VIPER Command Log (CX 1), and on page 49, for

March 25, 2008, testified that she wrote that she conducted a PTZ check at 1:15 pm. The Respondent said that the officer who she viewed that day was Officer Sinclair who performed a midnight tour. She obtained the time noted in the entry from a logbook that officers use. The Respondent said that she "positively...absolutely did not" enter the wrong time for that entry. Additionally, she "absolutely [did] not" watch a blank screen for 29 minutes because she stated that looking at a blank screen would be humiliating in a room full of officers. The Respondent denied that she ever watched a blank screen at any point from March 18 to June 2, 2008.

The Respondent testified that she was "extremely puzzled" that she was accused of picking random times on 19 occasions. She said that it was easier to put the right date and the right time in the books. She recalled asking a member of the Technical Assistance and Response Unit (TARU) who regularly fixes the computer and cameras in the VIPER unit if it was possible that the times on the system could be inaccurate. She claimed that he said that it "happens all the time" and also that it was "very well...possible" that her name could be omitted from the computer in performing checks. According to the Respondent, in her conversation with the TARU member, he informed her that the computers were 20 years old and very antiquated with many problems. On a number of occasions, the Respondent testified that she has selected a specific date, and instead, a different date comes up on the computer. She also recounted that on occasion, footage is filed under a different date and time than the actual date and time that footage was captured.

With respect to Command Log entries regarding PTZ checks, the Respondent testified that she was trained by "someone who said you just have to put the time in that you start viewing [,] start your entry and when you are complete you have to put in no

violation observed or if there is a violation observed." The Respondent affirmed that she made her entries in this fashion, by beginning the entry at the time that she starting viewing footage, not when she concluded viewing. She asserted that the entry was an "ongoing entry" that cannot be completed in one minute and reiterated that she was trained this way and it is commonly done by other sergeants.

The Respondent said that she has never inputted a time in the future when conducting a PTZ check. She has been assigned to VIPER for two years and has never had any problems or received any command disciplines for failing to conduct PTZ checks. She said that no problem was ever brought to her attention despite the fact that regular audits are conducted.

On the VIPER Command Log (CX 1), the Respondent acknowledged that there are three entries on the first page, 47, made with a stamp. She testified that the stamp is an equipment check, performed by the officers. They record the number of cameras, how many are functional and non-functional and the room temperature, as the cameras require a certain temperature or they will malfunction. The entries to the right of the stamped entries are notations about the functionality of the "sky cam." The Respondent noted that the first page was missing an entry concerning the required license plate checks. She explained that in a VIPER unit, officers are required to check the license plates of two cars per hour. Although a Command Log entry is supposed to be made reflecting when plate checks are performed, one entry is made and not at an exact time. The Respondent said that not all of the plates are checked at the same time and she claimed that the entries were a "recording" of the work being done in the VIPER room. She claimed that the same concept of the camera entries applies to the entries for the PTZ checks.

The Respondent expressed her belief that the Command Log in the VIPER unit was not a traditional Command Log. She explained that in a patrol precinct, a Command Log would be under the exclusive control of a supervisor, whereas in the VIPER unit, the Command Log was "totally controlled" by police officers who used it to document their activities. The Respondent testified that a "real" Command Log, per the Patrol Guide, would have had exclusively her handwriting in it and been under her control. She further asserted that the log in her VIPER unit was used more so for documenting what the officers were doing and "not so much accuracy of the time."

The Respondent denied that she intentionally failed to perform PTZ checks on nine occasions. She testified, "I...wholeheartedly...pride myself in the work that I do. I don't cheat such a simple assignment as to put an entry in this book." She said that she believed it was easier to simply record the correct entry as opposed to inventing false entries. She reiterated that in the year and a half she was assigned to the VIPER unit, no one ever brought to her attention any problems with her work.

On cross-examination, the Respondent denied that she knew [REDACTED] worked at Town Hall and denied that she went there to harass her. She recalled an Official Department Interview on February 14, 2007 conducted by Jeanty, and asserted that she was truthful during this interview. When confronted with her response from this interview where she stated that she was attempting to avoid [REDACTED] at Town Hall because she knew she worked there, the Respondent agreed that she was knew that day that it was possible that [REDACTED] worked there. She stated that she believed that [REDACTED] may have worked there based on questions and statements from DeRespino which alluded to that fact. During her Official Department Interview on January 2, 2007, the Respondent acknowledged that she indicated she had no idea where [REDACTED] worked. And, on a

November 6, 2006 Official Department Interview, with same question, the Respondent told the interviewer that they were the “first person [who] finally confirmed” that [REDACTED] worked at Town Hall. She recalled making that statement during that interview.

The Respondent reiterated that she went to [REDACTED] Town Hall on June 19, 2006 regarding the complaint she made and to talk to Sullivan in person. She had a suspicion of corruption within the Town of [REDACTED]. The Respondent denied that she knew that [REDACTED] worked at the Town Hall, but had a suspicion that she did because of the way that her complaint was being handled coupled with the continuous complaints about her to DeRespino. The Respondent noted that DeRespino told her about the complaints from [REDACTED] on June 19, 2006, before she went to the Town Hall. She denied that DeRespino ever told her that [REDACTED] worked at Town Hall, however, she said that she “left work with the thought in my head that this woman must work for Town Hall.”

Regarding the April 25, 2006 incident with [REDACTED], the Respondent reaffirmed that she did not report the incident because she did not believe it was a police occurrence. When asked if she informed the [REDACTED] County Police, whom she summoned to the scene, if [REDACTED] threatened to kick her ass, the Respondent said, “I heard something to that effect that I am going to kick your ass.” She claimed that she did not know who [REDACTED] was screaming and yelling at, but acknowledged that it was projected in her direction. The Respondent stated that she thought [REDACTED] was crazy and she did not know who she was yelling at. She said she never had a single dispute with [REDACTED] and alleged that [REDACTED] “made up” an incident involving a dispute over the throwing of sand on her property. The Respondent said that [REDACTED] “made up a lot of weird statements about me that were all by the Department unfounded.”

The Respondent reiterated that she did not think of the April 25, 2006 incident as a dispute that should have been reported to the Department. She acknowledged that she has been a member of the Department for 17-and-a-half years and a sergeant since May 2002. She disputed, again, that the April 25 incident was an unusual police occurrence because it did not concern her personally.

With respect to her belief that there was corruption within the Town of [REDACTED], the Respondent explained that the phone calls that she made to the town before writing her complaint letter went unaddressed. She said that she believed the complaints made against her to the Department was corruption in that [REDACTED] worked at the same office that her complaint letter went to. The Respondent testified she believed her complaint would be addressed but that it was "buried" because [REDACTED] worked for a high ranking town board member. She absolutely suspected [REDACTED] was involved with some form of corruption concerning the complaint she had made. She noted that [REDACTED]'s basketball hoop, the subject of her complaints, is still there and has not been moved. The Respondent believed that [REDACTED] used her employment with the Town of [REDACTED] to influence the lack of action on her complaint.

The Respondent contended that she never told Olson on September 30, 2006, that she was not coming in for an interview. She admitted, however, to telling him that she was absolutely feeling sick. She believed that Olson said that he was calling about an investigation that he was conducting concerning an allegation that was made against her. The Respondent claimed that Olson would not listen to her and that she was not permitted to request that she be interviewed at another time; she contended that Olson would not allow her to speak because he was yelling at her. She was not allowed to ask for an interview on an alternate date. That day, the Respondent said she had "at least"

two conversations with Olson and one with McSorley. In all of the conversations, she maintained that she was "barked" orders and not allowed to speak.

On questioning regarding the PTZ checks, the Respondent affirmed that she discussed the video equipment at VIPER with a member of TARU. She recalled that the individual was a detective, however, she did not recall his last name. The Respondent testified that she spoke to this person before appearing on the charges in this case, and, although she "pondered" calling him as a witness, she elected not to do so.

The Respondent disputed that when she was questioned about the discrepancies between her Command Log entries and the audit report she claimed to have forgotten to do the check. She stated that she makes sure she gets the check done. In response to the Court's questioning, the Respondent explained that on a busy day, it was her practice to make a log entry indicating a PTZ check before she actually performed said check. The Respondent then testified that "the entries were always put in before the actual check was completed because sometimes it would take 30 minutes." However, the Respondent then averred that by the time she logged into the computer to perform the PTZ check, she was already starting her Command Log entry. She asserted her belief that it was not an issue of her making an entry before the check, rather, it was an issue of the computer "spitting out" wrong times and wrong dates. She then stated that she takes the Command Log with her to the computer and commences her entry simultaneously as she logs in to perform the PTZ check. The Respondent believed that in every instance in this case, she was already logged into the audit system before making a Command Log entry. She claimed that she would hold onto the Command Log during the time that she was performing the PTZ check so that no one else could use it.

On continued cross-examination, the Respondent recalled being questioned by Miller during a June 2008 Official Department Interview. She remembered Miller telling her that there were some occasions where he could not find a record of a PTZ check and asking if it was possible she forgot to do it, to which she conceded was a possibility. However, the Respondent testified that she has never forgotten to do PTZ checks.

The Respondent reiterated her belief that the Command Log at VIPER differs from the Command Logs in other commands within the Department. She agreed that although an entry is in the log, it does not necessarily mean that a task was completed. The Respondent disputed that making an entry of a PTZ check before it is actually completed is not correct. She contended that the entry is not the same as other Command Log entries and that it is an "ongoing entry" that cannot be done in "just one minute." She said that she was trained to enter the time that she began the check, and noted that all of the other sergeants make their entries in this manner.

On examination by the Court, the Respondent said that she never had a discussion with the [REDACTED] about their basketball hoop. She figured that it was easier to report the matter to Town Hall. The Respondent believed that she had previously called Town Hall to ascertain the rules about basketball hoops.

The Respondent recalled that when Sillaro was out in the street yelling, her son may have been there as well. The Respondent was doing yard work with her son at the time. She reiterated that she did not feel that she was personally involved in the incident because she did not look at or talk to Sillaro.

The Respondent said that her conversation with the TARU detective occurred about two weeks prior to her testimony in this case. She explained that she approached the detective and asked if he knew of any issues with the computer having incorrect dates

and times. She claimed that this detective told her that the computers were "about 20 years old and this is what we've got to work with [,] it's old equipment and we always have these problems. There is not much we can do about it." The Respondent asked about the possibility of the computer not showing that she performed checks that she claimed she did perform. She said that the detective told her "anything can be possible with these computers." Although the Respondent asserted that she had the detective's name written down somewhere, she did not have his name available in court.

On continued cross-examination, the Respondent admitted that she never told the TARU detective that she was going to trial in connection with charges that she made numerous inaccurate entries.

Prior to April 25, 2006, the Respondent affirmed that she had "absolutely no problems" with [REDACTED]. She denied any previous problems with [REDACTED], including an incident where she was alleged to have taken wood from her property and thrown it into a vacant lot. The Respondent said that was "another crazy accusation that she told Lieutenant DeRespino." She was similarly unaware of an incident where Mr [REDACTED] was alleged to have blown sand onto her property prior to the April 25 incident. In response to the Court's inquiry, the Respondent said that there was no incident like that at all. The Respondent offered that she "told the Department that I was in my driveway sweeping sand."

FINDINGS AND ANALYSISDisciplinary Case No. 82323/06

The Respondent is charged under Specification No. 1 with having "wrongfully followed Ms. [REDACTED] to Ms. [REDACTED]'s home, to her child's school and into her place of employment causing Ms. [REDACTED] annoyance and alarm." [REDACTED] did not testify in this case and the only evidence presented by the Department were hearsay statements. While hearsay is admissible it cannot be the basis for a finding without some reliable supporting evidence. In this case the only conceivable supporting evidence came from the hearsay statement of a witness Sansadero. No explanation was offered as to why Sansadero was not brought in by the Department to testify. In any event his statement was insufficient to provide any additional evidence that the Respondent was stalking [REDACTED]. Sansadero saw her at the [REDACTED] Town Hall, which is where [REDACTED] works. However it should be noted that Town Hall is a public building. Moreover Sansadero's statement that the Respondent said she did not belong there was hardly an admission of wrongdoing but a statement regarding her concern about [REDACTED] knowing she was there. Indeed she also told Sansadero that she wanted to see [REDACTED]'s supervisor, Sullivan. Whether that was the best way to handle the matter is not an issue not before this Court. The fact that she was at [REDACTED] Town Hall to complain to [REDACTED]'s supervisors, as [REDACTED] had complained to hers, is not stalking. Moreover the Respondent claims that she was at Town Hall to find out why no action had been taken on her complaint regarding the [REDACTED]' basketball hoops which she believed violated town ordinances. The Respondent is found Not Guilty of Specification No. 1.

Specification No. 2 of this case alleges that the Respondent failed to notify the Department of the response of the [REDACTED] County Police to her home on April 25, 2006. The Respondent testified that on that date, while in her driveway she "heard a bunch of yelling...ranting and yelling and screaming" towards her direction from [REDACTED] who was standing in the front yard. To address this disturbance the Respondent telephoned 911 because she was "startled and taken aback." It is not disputed that the [REDACTED] County Police responded to the Respondent's call and that she reported [REDACTED]'s conduct to them. The Respondent admitted that she did not notify the Department of the police response to her house and Jeanty's testimony confirmed this. The Respondent offered that she did not notify the Department because she "didn't think it was a police related matter in that respect." She further asserted that she was sure that there was no dispute between her and [REDACTED]. This argument is not well taken. A member of the service who is off-duty and is *either a participant or a witness* to an unusual police occurrence is required to notify the Department (see Patrol Guide § 212-32). This Court finds that Sillaro's alleged ranting, yelling and screaming in the street, coupled with the Respondent's request to have the [REDACTED] County Police respond to "see if...there was something wrong with her" consisted of an unusual police occurrence. The Respondent's own testimony establishes that she was, at the very least, a witness to [REDACTED]'s alleged bizarre behavior. Accordingly, the Respondent was under an obligation to notify the Department.

The Respondent is found Guilty of Specification No. 2 under this case.

Disciplinary Case No. 83217/07

The Respondent is charged with two specifications regarding her interaction with Olson and the Patrol Borough Bronx Investigations Unit in relation to an investigation of

an incident they were conducting on September 30, 2006. That incident occurred in Westchester County and the Respondent had filed a complaint against [REDACTED] for allegedly assaulting her son. [REDACTED] in turn complained to this Department and it fell to the Patrol Borough Bronx Investigations Unit to investigate the matter.

It is unquestioned that Olson called and directed the Respondent to come in for an interview and that Respondent became emotional. Olson provided credible testimony that the Respondent screamed and yelled at her and hung-up on him. The Respondent admitted to being emotional and her testimony that conversation ended cordially is not credible.

Olson also offered credible testimony that the Respondent failed to answer the telephone when he called back as alleged in Specification No. 2. Respondent's explanation that she was busy on many phone calls and may have just let the phone ring is not credible. It is clear that she did not want to deal with Olson and McSorley and the evidence is sufficient to establish that she ignored Olson's repeated attempts to contact her.

The Respondent is found Guilty of both specifications under this case.

Disciplinary Case No. 84836/09

The Respondent is charged under one specification with falsely noting in the Command Log PTZ camera checks which were not in fact conducted. Miller testified that it was the Respondent's responsibility to check the PTZ camera records and review PTZ camera use to make sure that officers were not using the cameras inappropriately. This is done on a digital system in which the Respondent logs in and then scans a half hour of recorded video. The computer program keeps a record of what video the Respondent viewed, the time period of the original recording and the time period of the

review. Miller found eight instances in which the Respondent made an entry in the Command Log as having viewed a video when the video log showed that no video had been viewed. Miller identified eight days on which this occurred.

This is competent and substantial evidence that the Respondent falsely claimed in the Command Log that she viewed videos when in fact she did not.

Miller also identified 19 days on which the Respondent claimed to view the video at a point earlier in her tour than she actually viewed the video. Again the logs and computer records along with Miller's testimony provide competent and substantial evidence that the Respondent did this.

The Respondent has pointed out that the video log indicates that some of the video times viewed did not exist at the time of the viewing and that the records are therefore unreliable. It is true that on several dates the log indicates that the video viewed came at a later time than the review and therefore could not exist. Miller indicated this would result in a blank screen and the Respondent testified that she never watched a blank screen.

It is not clear how this possible discrepancy occurred; however it is immaterial to the central issue of whether the Respondent reviewed the video at the time noted in the Command Log. There is no real question about the accuracy of those times as many line up with the Command Log. DX 7 lists ten days in the period from March 18, 2008 to June 2, 2008 in which the Command Log and the time of the video review match up and an additional four days when the review starts within five minutes of the Command Log entry. There are no charges for those four minor discrepancies and those fourteen dates indicate that the video log was accurate and that it was possible to make accurate Command Log notations about the starting time.

The time periods which are charged are:

March 25, 2008	23 minutes
April 5, 2008	12 minutes
April 7, 2008	9 minutes
April 8, 2008	44 minutes
April 11, 2008	40 minutes
April 13, 2008	41 minutes
May 2, 2008	20 minutes
May 3, 2008	6 minutes
May 6, 2008	38 minutes
May 12, 2008	41 minutes
May 13, 2008	39 minutes
May 16, 2008	1 hour 48 minutes
May 19, 2008	16 minutes
May 23, 2008	8 minutes
May 25, 2008	13 minutes
May 26, 2008	22 minutes
May 27, 2008	38 minutes
May 31, 2008	14 minutes
June 2, 2008	19 minutes

While some of the time discrepancies are minor some are significant. These time discrepancies plus the eight days on which no video review was done strongly indicate a pattern of writing the entry before actually viewing the video.

The Respondent offered confusing and, it seemed to this Court, inconsistent explanations as to when and how she made the Command Log entries. For instance Miller testified that at her Official Department Interview the Respondent stated that "when she comes into work normally at the top of the hour she will write in the Command Log that she is doing a PTZ check because that is what the captain and that is what she basically is required to do in case somebody comes in they want to see that PTZ check and she either tries to do it at that time or in some cases she will be distracted she has to pick up a phone and things will happen and that PTZ check will be conducted some time later in that tour." No one challenged Miller's version of the Respondents statements at the Official Department Interview. Nonetheless at trial the Respondent testified: "*I always took the logbook with me when I went to the computer I start my entry and I am putting my name and password in the computer.*" Indeed she further asserted that she put her name and password into the computer prior to making the entry in the logbook.

It is clear that the candid and truthful version of when, how and why the Command Log entries were made was in her statements at the Official Department Interview and that her testimony at trial was an attempt to explain away not only the problem of the discrepancies but the problem of her own earlier statement which was tantamount to an admission.. The practice of writing the entry before viewing the video would also explain the days on which videos were listed in the Command Log has having been viewed and on which the audit report indicates that that no viewing occurred. Indeed the Respondent herself explained it at her Official Department Interview; she would make the entry and then get busy with other things. The practice would also

explain the discrepancies between the time of the viewing listed in her log entry and the actual time of the viewing of the video as noted in the computer records.

Moreover with regard to the alleged viewings of non-existent recordings, the Respondent's claim that it would be "humiliating" to look at a blank screen assumes that she was actually watching such a screen.

The Respondent is found Guilty of Specification No. 1.

PENALTY

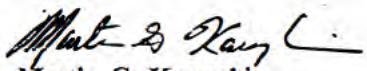
In order to determine an appropriate penalty, the Respondent's service record was examined, see *Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on January 13, 1992. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found guilty of conduct involving several incidents involving a variety of acts of misconduct. Her failed communication with the Bronx Investigations Unit was the result of her immature and unprofessional conduct. Her misconduct in the VIPER unit is a clear dereliction of duty coupled with a lack of candor on her part in attempting to back away from her own earlier admissions.

Based on all of the above this court recommends the Respondent be DISMISSED from the New York City Police Department but that her dismissal be held in abeyance for a period of one year pursuant to Section 14-115(d) of the Administrative Code of New York City, during which time she is to remain on the force at the Police Commissioner's discretion and may be terminated at anytime without further hearings. Furthermore, this

court recommends that the Respondent be required to forfeit 29 days time already served on suspension plus an additional 11 vacation days.

Respectfully Submitted,


Martin G. Karopkin
Deputy Commissioner-Trials

APPROVED

RAYMOND W. KELLY
POLICE COMMISSIONER